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UNITED STATES SUPREME COURT

OCTOBER TERM, 1940

No. 716

CHARLES HUSSOCK,

vs. *Appellant,*

THE PEOPLE OF THE STATE OF NEW YORK,

Appellee.

APPEAL FROM APPELLATE PART OF COURT OF SPECIAL SESSIONS OF THE CITY OF NEW YORK, FIRST JUDICIAL DEPARTMENT, COUNTY OF NEW YORK.

Docket No. 76-NY-40.

JURISDICTIONAL STATEMENT.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 46, an appeal may be taken in

any case which under prior statute could be received as a matter of right on writ of error.*

New York Statute Drawn in Question.

The statute, the constitutionality and validity of which as construed and applied to appellant is here drawn in question, is Article 70, Section 722, subdivisions 2, 3 and 4, of the Penal Law of the State of New York, to wit:

> "Sec. 722. Any person who, with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts, shall be deemed to have committed the offense of disorderly conduct:
>
> "* * * 2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;
>
> "3. Congregates with others on a public street and refuses to move on when ordered by the police;
>
> "4. By his actions causes a crowd to collect, except when lawfully addressing such a crowd; * * *"

The Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, held that the statute was not unconstitutional and that it did not abridge appellant's right of freedom to worship ALMIGHTY GOD, freedom of conscience, of speech, of press, and of assembly, contrary to the United States Constitution, Fourteenth Amendment, Section 1. Accordingly, that court sustained the statute's application to appellant's acts and decided in favor of validity of the statute and held it to be constitutional as applied to appellant.

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* The Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, became the court of last resort in this cause in the State of New York by reason of refusal of the Chief Judge of the New York State Court of Appeals to allow appeal from said lower appellate court. See (*infra*) "Statement of Nature of Case".

The New York State Court of Appeals, by refusing to allow appeal, likewise sustained the statute's application to appellant's acts and decided in favor of the validity of the statute and held it to be constitutional as applied to appellant. See (*infra*) "Statement of Nature of Case".

Timeliness.

The order of affirmance of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, was entered on November 26, 1940 (R. —). That court's opinion was delivered on the same date and appears in the record at page —. (Also, see Appendix A.) The judgment of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, became final on December 13, 1940, the date of the denial of the application of appeal to the New York State Court of Appeals (R. —). (Also, see Appendix B.) The petition for appeal is duly filed and presented to this Court within ninety (90) days from such date and is therefore timely.

Statement of Nature of Case.

Appellant, Charles Hussock, was arrested on the evening of March 28, 1940 by the New York City police for an alleged violation of the aforementioned statute.

Appellant was prosecuted by complaint before the Seventh District City Magistrates' Court for the Borough of Manhattan, City and County of New York. On May 20, 1940 appellant was tried, convicted and fined by the presiding magistrate of such court. Appellant duly appealed in the time and manner required by law to the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, by filing notice of appeal and a certified copy of the record of proceedings in aforesaid City Magistrates' Court.

The Complaint among other things charged the defendant as follows:

> "Charles Hussock did commit the offense of disorderly conduct in violation of the Penal Law, Section 722, Sub-division 2 for the reason that at the time and place aforesaid, the said defendant did unlawfully and with intent to provoke a breach of the peace and whereby a breach of the peace might be occasioned, did at about the hour of 7:45 P. M. this date while selling magazines, cause a crowd to collect, and refuse to move on when ordered by the deponent."

The Facts as established by the evidence are these:

Charles Hussock, appellant, is one of Jehovah's witnesses and an ordained minister of Jehovah God and possessed credentials attesting to the fact that he is such and is sent forth by command of ALMIGHTY GOD to preach the good news of God's Kingdom through distributing magazines and pamphlets making plain the fulfillment of prophecies recorded in the Bible, and showing how, according to the Bible, the time is near at hand when JEHOVAH, the Almighty God, will completely destroy Satan and his entire organization, consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon; which destruction shall be immediately followed by continuing growth and expansion of God's Kingdom throughout the entire earth, to bring everlasting peace, joy, life, prosperity and happiness to all survivors and eventually also to many who have died in centuries past and who shall be resurrected to live upon earth. Said publications' contents, in part, are admittedly a most forceful attack upon religion, ALL RELIGION, as practiced today and as practiced at all times since man has been upon earth; but at the same time such books' contents ALSO clearly set forth the true distinction between *all religion,* on the one hand, and, on the other hand, the true worship

or service of ALMIGHTY GOD, thereby exposing religion as a snare and a racket of the very worst kind, and showing beyond dispute that religion, ALL RELIGION, is in no way related to or a part of the true worship of Almighty God as by Him commanded in His written Word, the Bible.

Appellant, as defendant in the trial court, testified to many Scriptures directing the course of action taken by him (R. [Stenographer's Minutes, pp. 54-76] —).

While standing on the curb of the sidewalk at 44th Street and Broadway, Borough of Manhattan, City of New York, at about 7:40 P. M., on March 28, 1940, appellant had strapped over his shoulder a canvas bag containing copies of *Watchtower* and *Consolation* magazines, a book entitled *Salvation,* and copies of a booklet entitled *Refugees,* and in one hand upheld a sign (People's Exhibit 1) reading as follows:

> THE WATCHTOWER EXPLAINS THE THEOCRATIC GOVERNMENT, 5 CENTS PER COPY.

And on the other side of the same sign, words as follows:

> LEARN THE DIFFERENCE BETWEEN RELIGION AND CHRISTIANITY.

(R. [S. M., pp. 7-8] —.)

In his other hand he held a copy of the *Watchtower* magazine which he was offering to pedestrians; and to such passersby he called out in an audible tone of voice, separately, in turn, the following slogans:

1) Read the Watchtower and learn all about the Theocratic Government.

2) The Watchtower is a magazine for all persons of good will, showing them the only hope of the world.

3) The Watchtower exposes religion as a snare and racket.

4) Learn the difference between religion and Christianity.

5) Now is the time to learn the difference between religion and Christianity.

While thus engaged, defendant was accosted by a passing pedestrian, the People's witness O'Neill, and what thereafter took place is well described by appellant's own testimony:

> 'Prior to the time the police officer arrived I saw the witness O'Neill. He was right there, nearby, heckling me, while I was repeating the statement, "Learn the difference between religion and Christianity." He came over to me and said, "What religion is a racket? I demand to know what religion is a racket." In turn I repeated to him "Get your copy of the magazine Watchtower, it will explain it to you." He said, "What religion? No, I don't want that stuff." To which I replied, "I am sorry, if you don't want a Watchtower keep on moving because you are causing a crowd to collect" (R. [S. M., p. 80] —).
>
> 'As a result of the yelling of the witness O'Neill while heckling me, a crowd started to form around (R. [S. M., p. 81] —). And in his yelling tone the witness O'Neill shouted, "That son-of-a-bitch ought to be hung" and the crowd began to gather (R. [S. M., p. 81] —). Later on the police officer came up; he told the crowd to move on, but failed to get the crowd to move and started away and O'Neill began to heckle me again. I said to the policeman, "Officer, this man is causing this crowd to collect; how about making him move?" And when some one in the crowd complained of me the officer said, "Well, come on with me" (R. [S. M. 82] —).
>
> 'I am twenty-six years of age, educated in Pennsylvania' (R. [S. M., p. 84] —).

Arresting officer (the complaining witness) Otto Skrivanek testified as follows:

'I was directing traffic on the corner of 44th Street and Broadway, and was attracted by a large crowd on the northeast corner, and I went over about 7:45 P. M. and there I saw the two defendants, Francis Bobb and Charles Hussock, in the center of a crowd; I tried to disperse the crowd and failed to do so. There were at least 100 people in the crowd, just at theatre time. Defendants were selling some pamphlets which they had in their hands, and talking of religion. I heard him say "Religion is the greatest racket on the face of the earth." He had a pamphlet in his hand and a sign on a stick reading, "The Watchtower explains the Theocratic Government, 5 cents per copy," and on the other side, "Learn the difference between Religion and Christianity." And they had each a bag slung over their shoulders containing the pamphlets. On the cloth bag appeared the words, "The Watchtower and Consolation, 5 cents per copy"; and on the other side, "The Watchtower explains the Theocratic Government, 5 cents per copy." The pamphlet held by Charles Hussock in one hand while holding the placard in the other is of orange color, entitled "The Watchtower" (R. [S. M., pp. 4-10] —).

'I tried to disperse the crowd. I went over to him and asked him if he had a public worship card that is issued by the Police Commissioner, telling if and when he may speak on religious matters since he had attracted a crowd there, and he told me he did not (R. [S. M., p. 11] —). I ordered him to move on, and he told me that the card he produced from his pocket [Defendant's Exhibit A] gave him the right to speak there. I told him that he would have to have one from the Police Commissioner, and since he could not produce one I told him to move. I turned my back to give him a minute or two to think it over, and as I turned I heard the defendant Hussock repeat "Religion is the greatest racket on the face of the earth." I went back and told him he couldn't do that. He said "Does

that mean we are under arrest?" and I said "Yes" and with that I took him in (R. [S. M., pp. 12-13] —).

'The entire crowd refused to move and the defendant was one of the crowd, but the only one that I saw fit to place under arrest (R. [S. M., pp. 17, 18] —). At that time the defendant had People's Exhibits 1, 2, 3 and 4 and Defendant's Exhibit A and was saying "Religion is the greatest racket on the face of the earth" ' (R. [S. M., p. 20] —).

People's witness O'Neill testified as follows:

'My name is Harry J. O'Neill. I live at 864 Macon St., Brooklyn, New York. My business is doorman. I saw the defendant Hussock about quarter to 8 near the corner of 44th and Broadway. I had just come out of Loew's State Theatre. I heard them [referring to defendant Hussock and his partner Francis Bobb] hollering "Religion is a racket, the greatest racket on earth is religion." I stepped over and asked them "What religion?" I said "What religion?" They said "Here, read the Watchtower, read the Watchtower." I said "I do not want to read the Watchtower; I want to find out." So they said "Read the book, I cannot reveal anything else, but read the book." I said "I don't want to read the book; what religion? what religion?" (R. [S. M., pp. 23, 24] —).

'I heard the officer address the defendant Hussock and ask for his credentials; and Hussock pulled out some card (R. [S. M., pp. 26, 27] —). They started hollering again "Religion is a racket, the greatest racket." So when the officer moved away I walked over and said "What religion?" The officer told them to move on while he was there (R. [S. M., p. 27] —). In about three minutes the officer returned and he told Hussock "I told you to move on and now I will have to place you under arrest" (R. [S. M., p. 28] —).

'As to what was in my mind when I went over there to approach the defendant, I had in mind that my religion was being trampled upon and I resented it (R. [S. M., pp. 32, 33] —). The defendant was right on

the edge of the curb and the crowd was on the sidewalk (R. [S. M., p. 35] —). When the officer asked the crowd to move I was among the crowd and moved about three or five feet (R. [S. M., p. 38] —). I came back to the same spot I was in and stayed there until the officer returned the second time (R. [S. M., p. 39] —). Only one time before I have also caused difficulties that resulted in the arrest of another of Jehovah's witnesses in Brooklyn on Saturday' (R. [S. M., pp. 41, 42] —).

At conclusion of all evidence presented before the magistrate the appellant (then defendant) filed his motion to dismiss the complaint and to discharge the defendant upon the grounds that the statute as construed and applied was void because contrary to the United States Constitution, Fourteenth Amendment, Section 1 (R. [S. M., pp. 85-100] —). Such motion to dismiss was overruled by the court and the defendant was convicted and he allowed an exception. In the motion so overruled the defendant contended that the statute as construed and applied to him was invalid and void and unconstitutional in that as so construed and applied it unlawfully deprived him of his rights of freedom to worship Almighty God according to God-given commands recorded in Holy Writ and according to the dictates of defendant's conscience; also, of freedom of speech, of press and of assembly.

In the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, *substantial Federal questions* attacking the validity of the statute were raised by briefs and argument submitted to the court, on the ground that as construed and applied to appellant, and on its face, the statute is invalid because it is repugnant to the United States Constitution, Fourteenth Amendment, Section 1, in that it unreasonably deprives appellant of freedom to worship Almighty God,

freedom of speech, of press, and of assembly. And, further, that such statute vests in the police authority arbitrary and discriminatory powers and fails to prescribe conditions upon which such powers may be employed, and is vague and indefinite; thereby denying equal protection of the laws and depriving appellant of his liberty without due process of law contrary to the Federal Constitution, Fourteenth Amendment, Section 1.

These points of law were overruled by the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, although duly and timely urged (R. —). (Also, see Appendix A.) These points of law, thus duly and timely presented before both the trial court and the appellate court and overruled in both, constitute *substantial Federal questions.*

The Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, passed upon each of said Federal questions or assignments, attacking the validity of said statute as applied to appellant, and held the statute valid and constitutional, both on its face and as applied, and found that the Fourteenth Amendment to the United States Constitution was not violated. See Opinion, Appendix A.

The Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, sustained the conviction of appellant and affirmed the judgment of the trial court assessing a fine against appellant (R. —).

There was no evidence that the appellant acted boisterously or in a truculent manner. The undisputed evidence showed that his conduct did not involve a violation of the law of morals, or imperil the safety of the State, or violate property rights, or disturb the public peace. The undisputed evidence shows that appellant was engaged in an act of worship of ALMIGHTY GOD by publicly exposing the danger

that the people face by yielding to or continuing in the snare of religion, which makes void the commandments of Almighty God written in The Bible.

In the petition for appeal and the assignments of error filed with this statement, appellant complains of the judgment of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, for and on account of each of the grounds set forth in his brief filed in said appellate court and which grounds were also set forth in his motion to dismiss presented to and overruled by the trial court.

Within thirty days from the date of such judgment of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, the appellant, in the time and manner prescribed by Section 520 of the New York Code of Criminal Procedure, duly presented to the Chief Judge of the New York State Court of Appeals an application for certificate allowing appeal to that court from the order of affirmance by the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York. In such application to the Chief Judge, Irving Lehman, of the New York State Court of Appeals, the appellant complained of the judgments of the Seventh District City Magistrates' Court of the City of New York, Borough of Manhattan, and the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, for and on account of the fact that the statute had been construed and applied to deprive appellant of his right of freedom of speech, of press and of assembly, and freedom to worship Almighty God according to dictates of his conscience, and because such statute vests a dragnet, arbitrary and discriminatory power in the police and leaves the question of violation of such statute entirely to the whim of the police and is thus vague and indefinite and void on

its face and as construed and applied. See Certificate of Chief Judge Irving Lehman, Appendix B.

The Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, was the highest court in the State of New York in which a decision could be had in this cause, although such court is not the highest court in the State of New York. The order of affirmance of said Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, was not susceptible of further review in the State courts, and all proper steps were taken to secure further review in presenting the application to the Chief Judge of the New York State Court of Appeals, who refused to exercise his discretionary power and allow a review by the New York State Court of Appeals. The appeal herein is from the judgment of the intermediate State court, the aforesaid Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, which the New York State court of last resort declined to review. See *Bacon* v. *Texas,* 163 U. S. 207, 215, 16 S. Ct. 1023, 41 L. Ed. 132; *Sullivan* v. *Texas,* 207 U. S. 416, 422, 28 S. Ct. 215, 52 L. Ed. 274; *San Antonio & A. P. R. Co.* v. *Wagner,* 241 U. S. 476, 477, 36 S. Ct. 626, 60 L. Ed. 1110; *Randall* v. *Board of Commissioners of Tippecanoe County, Ind.,* 261 U. S. 252, 43 S. Ct. 252, 67 L. Ed. 637; *Western Union Tel. Co.* v. *Crovo,* 220 U. S. 364, 366, 31 S. Ct. 399, 55 L. Ed. 498; *Stanley* v. *Schwalby,* 162 U. S. 255, 269, 16 S. Ct. 754, 40 L. Ed. 960; *Norfolk & S. Turnpike Co.* v. *Virginia,* 225 U. S. 264, 269, 32 S. Ct. 828, 56 L. Ed. 1082; *Cuyahoga Power Co.* v. *Northern Realty Co.,* 244 U. S. 300, 302, 303, 37 S. Ct. 643, 61 L. Ed. 1153; *Western Union Tel. Co.* v. *Priester,* 276 U. S. 252, 258, 48 S. Ct. 234, 72 L. Ed. 555; *Pennsylvania Railroad Co.* v. *Illinois Brick Co.,* 297 U. S. 447, 453, 56 S. Ct. 556, 80 L. Ed. 796; *Mellon* v. *O'Neill,* 275 U. S. 212, 213, 48

S. Ct. 62, 72 L. Ed. 245; *Second National Bank of Cincinnati, Ohio,* v. *First National Bank of Okeana, Ohio,* 242 U. S. 600, 37 S. Ct. 236, 61 L. Ed. 518; *Chesapeake & Ohio Ry. Co.* v. *Kuhn,* 284 U. S. 44, 45, 46, 52 S. Ct. 45, 76 L. Ed. 157.

Preliminary Statement.

Section 722 of the Penal Law of the State of New York as more often applied usually presents to the court only minor cases.

The case here presented is of very great importance.

It is of extraordinary consequence because of the fact that the statute has been misused and misapplied for the purpose of depriving a peaceable and law-abiding person of constitutionally secured rights.

The importance of this case was called to the attention of the courts below, when the constitutional questions were extensively argued; but those courts sidestepped such argument and pushed it aside and completely ignored the argument as is demonstrated by the city magistrate's inconsiderate statement, "There is no constitutional question here; this is just a simple case of disorderly conduct."

We call to the Court's attention that the appellant was charged by complaint referring specifically to "Sub-division 2" of Section 722, *and* by description of acts and conduct specifically set forth in the same complaint alleging a violation of Sub-divisions 3 and 4 of said Section 722, Article 70, Penal Law of the State of New York.

When this matter was considered by the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York, that court held that only Sub-division 3 of Section 722 had been violated by the appellant. Among other things that court said:

> "It is clear from the record that although the complaint specifically charged a violation of Sub-division

> 2 of said Section 722, the Court found defendant guilty of refusing to move on when ordered so to do by the policeman. In other words, the conviction was based upon a violation of Sub-division 3 of said Section 722, pursuant to which a person may be adjudged guilty of disorderly conduct who 'congregates with others on a public street and refuses to move on when ordered by the police.' * * * From a reading of the record we are of the opinion that defendant was properly convicted of a violation of Section 722, Sub-division 3 of the Penal Law and that the judgment should be affirmed."

Attention of this Court is invited again to the fact that in this case this statute has been misused and misapplied for the purpose of depriving a peaceable and law-abiding person of constitutionally secured rights, and that the police and the courts below have shared in this deprivation of rights.

The arbitrary and discriminatory practice of the police of the City of New York in enforcing this statute is notorious.

Such unlawful conduct on the part of the police has been repeatedly condoned and approved by a majority of the magistrates of the City Magistrates' Court of the City of New York and by the City's Court of Special Sessions. From time to time, however, judicial officers with a vision and a love for liberty have expressed disapproval of the "Gestapo" tactics of the city's police, as shown in the case brought against Benjamin Jacobs and Harry Lynch, discharged by City Magistrate Rudich in the Borough of Brooklyn, City of New York, in the fall of 1938. That magistrate said:

> "You police have an idea that because a citizen asserts his rights he becomes offensive to you and to others. If the assertion of a right amounts to dis-

orderly conduct people will be afraid to stand up for their constitutional rights."

To that statement of the magistrate the policeman brazenly retorted in open court that he would continue to arrest them as long as he found them doing the same thing. The magistrate continued: "And as fast as you bring them in I'll turn them out again. If you have any doubts in the matter, take it up with your superiors and the Police Commissioner."

Grounds and Decisions Showing Substantial Federal Questions.

Appellant's contentions herein are that the statute drawn in question, to wit, Article 70, Section 722, Sub-divisions 2, 3 and 4, as applied to his activity, is void in that it

A) deprives him of his right of freedom to worship ALMIGHTY GOD according to God-given commands recorded in Holy Writ and in accordance with appellant's conscience; and deprives him of freedom of speech, of press, and of assembly, all in violation of the United States Constitution, Fourteenth Amendment, Section 1; and

B) is void on its face inasmuch as it vests in the police authority named therein unreasonable and unlimited arbitrary and discriminatory powers, prescribes no conditions upon which said police authority may or may not order one to move on, permits arbitrary discrimination and speculation as to what constitutes a crowd, and allows a dragnet to be made of the statute, thus denying due process of law contrary to the United States Constitution, Fourteenth Amendment, Section 1.

ARGUMENT.

A.

The statute as construed and applied to appellant unlawfully deprives him of his right of freedom to worship Almighty God according to God-given commands recorded in Holy Writ and in accordance with appellant's conscience; and deprives appellant of freedom of speech, of press, and of assembly, all in violation of the United States Constitution, Fourteenth Amendment, Section 1.

To apply Section 722 of the Penal Law to activities of the appellant and sustain his conviction on the evidence is error and makes the statute as construed and applied to him unconstitutional and void under the "due process" clause of the Fourteenth Amendment to the Federal Constitution because it abridges his right of freedom to worship ALMIGHTY GOD, as well as his rights of free assembly, free speech and free press, contrary to said constitutional provision.

Attention of the court is called to the fact that under this portion of the Argument the unconstitutionality of the statute is asserted on the ground that *as applied,* contradistinguished from "on its face", the statute is unconstitutional in that it has been wrongfully used to deprive the defendant-appellant of his right of freedom of worship, of speech, of press and of assembly.

In a subsequent portion of this Argument we contend that this statute is unconstitutional *on its face,* but for the purpose of the argument at this particular point we concede (only for argument's sake) that the statute may be constitutional *on its face.*

It is a fundamental proposition that if a statute constitutional on its face is applied to deprive and interfere with constitutionally secured rights, such as the undisputed evidence shows the defendant was exercising at the time of his arrest, then such statute becomes invalid.

In support of this proposition we refer the court to *Concordia Fire Insurance Co.* v. *Illinois,* 292 U. S. 535, 545, where Mr. Justice Van Devanter stated:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

In another case involving activities of one of Jehovah's witnesses (*Village of South Holland* v. *Mrs. Paul Stein,* 373 Ill. 472, 26 N. E. (2) 868), the Illinois Supreme Court said:

> "* * * the question is not the formal interpretation of the ordinance but the application given to it. A statute or ordinance may be invalid as applied to one state of facts and yet valid as applied to another."

In addition to the above authorities there are numerous others to the same effect. *Whitney* v. *California,* 274 U. S. 357, 71 L. Ed. 1091; *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 66 L. Ed. 239; *Herndon* v. *Lowry,* 301 U. S. 242, 82 L. Ed. 949.

All persons who covenant, as did the appellant, to do the will of Almighty God, who do His will, and who worship and serve Him sincerely as commanded in His written Word, are Jehovah's witnesses; and this is true without regard to denomination. Jehovah's witnesses are not a *recently* organized company.

The Lord Christ Jesus is the Great Witness to the name and kingdom of Jehovah, the Almighty God. The Bible designates Christ Jesus as "The Faithful and True Witness" (Revelation 1:5; Revelation 3:14). Before the Roman governor Jesus said that He came to earth to bear witness to the truth and that His followers must likewise be witnesses (John 18:37; John 15:27). Recognizing the obliga-

tion upon all such followers of Jesus Christ who are in a covenant to do the will of Almighty God, Jesus Christ's apostle Peter wrote that all such must follow in the footsteps of Christ Jesus, bearing witness to the truth (1 Peter 2:9, 21). Those who worship Jehovah God in spirit and in truth have committed to them the testimony concerning Jehovah, His name, and His Kingdom, and hence all such are Jehovah's witnesses (Revelation 12:17; Matthew 24:14; Isaiah 43:9-12). Such sincere followers of Christ Jesus are found in many denominational groups and also outside of all such groups.

Christianity means to be obedient to the law of Jehovah, the Almighty God (Hebrews 10:7; Psalm 40:6-8). There is one Christianity. There are many religions practiced in defiance of God's law. The fundamental law of the United States declares that there shall be no discrimination between any of such nor any interference with regard to religion or with persons in their worship of Almighty God but that each individual shall freely worship according to the dictates of his own conscience as long as the exercise by him of such right does not endanger public safety or infringe personal rights.

The appellant is a sincere follower of Jesus Christ, conscientiously endeavoring to obey Almighty God and to worship Him in spirit and in truth, as commanded by God.

The court below seemed to be surprised at the *way* in which Jehovah's witnesses, including this appellant, preach the good news of the Kingdom of Almighty God, His Theocratic Government, in obedience to the God-given command.

In this regard we call attention to the fact that appellant and others of Jehovah's witnesses are duty-bound under their covenant with Almighty God to follow in the footsteps of the Lord Jesus Christ and His apostles (1 Peter 2:9, 21), and as ministers of Jehovah God each of them is required by His written law to go upon the public streets and from

house to house declaring the good news of His Kingdom, the Theocratic Government, and the day of God's vengeance (Isaiah 61:1-3; Proverbs 1:20, 21; Isaiah 58:1; 1 Corinthians 9:16). In acting thus they prove themselves to be witnesses of Jehovah, the Almighty God, even as they do when offering the God-given truths in recorded form, reproducing the same audibly on phonographs. Were he to cease proclaiming the written judgments of Almighty God by yielding to threats of police officials, or for any other reason, appellant would violate his agreement to obey Almighty God, who commands such proclamation to be made now, and thereby appellant would subject himself to everlasting destruction by Almighty God (Ezekiel 33:8, 9; Acts 3:22, 23). Thus Jesus Christ's apostles taught publicly (Acts 20:20; Matthew 10:7, 12-14; Acts 5:40-42). In doing the same thing now, Jehovah's witnesses today, even as their fellow witnesses in ancient time, obey the law of Almighty God.

All who live must depend upon Jehovah God and obey Him. He is the "fountain of life" (Psalm 36:9). One who would live must obey God's law (John 17:3), which is supreme (Psalm 19:7, 8). Defendant and others of Jehovah's witnesses desire to live, and therefore they choose to obey Almighty God. Neither the United States of America nor the State of New York, or any other human agency, can give life.

This case is only one of many thousands that have been prosecuted in this country during the past decade against Jehovah's witnesses, and it is a part of a retrograde movement to return to the totalitarian rule and to put "the State" above ALMIGHTY GOD as to the individual in his relations toward the Creator, and thereby ultimately to turn all peoples against the Creator.

More than fifty centuries ago Jehovah God gave His word that He will set up His Kingdom, which is The Theocratic

Government announced by appellant and others of Jehovah's witnesses, and through that Kingdom all blessings will come to every obedient person on earth. Almighty God is certain to make good that promise (Genesis 22:18-22; Isaiah 46:11; Isaiah 55:11).

By some it may be contended that the practice of appellant and others of Jehovah's witnesses in announcing publicly on the streets that "religion is a snare and a racket" is not a proper *way* of worship because it sometimes causes offense to one who hears, as for example, in the present case People's witness O'Neill testified against appellant.

Repeatedly this nation's highest court has held that the individual alone is privileged to determine what he shall or shall not believe and how he shall exercise his right of conscience in performing and practicing such belief. The law therefore does not attempt to settle differences of belief and confession, and will not say that any point or doctrine is too absurd to be believed. This same high tribunal also has held to the rule that neither the government nor any agency thereof can establish a State religion.

This is likewise prohibited by the Constitution of the State of New York. This Court will not extend favor or protection to any particular form of worship or manner of exercising and enjoying one's religious freedom. Neither will nor can this Court protect religion from being exposed by ALMIGHTY GOD, Jehovah, through the activity of His witnesses on earth participating in His "strange work" (Isaiah 28:21), and of showing openly, in the public interest, that religion "is a racket and a snare" that leads men to death.

To hold that use of the words "Religion is the greatest racket on earth" amounts to a breach of the peace when said in the hearing of religionists, or amounts to disorderly conduct under such circumstances, would in effect be to establish a "state religion" and thereby extend favor or

protection to religion in violation of the Federal and State constitutions. In the law there are no limitations that prohibit use of the statement "Religion is the greatest racket on earth" or "religion is a snare and a racket". Use of such expressions does not constitute a violation of morals, does not imperil the safety of the State, does not infringe property rights and does not infringe the personal rights of others.

Jesus Christ's apostle Paul, at one time a Pharisee and as such a practitioner of religion, said: "I am a Pharisee, [and] the son of a Pharisee" (Acts 23:6). When before King Agrippa Paul said: "After the most straitest sect of our religion I lived a Pharisee" (Acts 26:5). After becoming a follower and apostle of Jesus Christ and one of Jehovah's witnesses, Paul wrote these words, to wit: "For ye have heard of my conversation in time past in the Jews' religion, how that beyond measure I persecuted the church of God, and wasted it; and profited in the Jews' religion above many my equals in mine own nation, being more exceedingly zealous of the traditions of my fathers."—Galatians 1:13, 14.

Religion is taught by the traditions of men.

Religion is the product of creatures which they use to ensnare and control their fellow creatures.

THE TRUTH is the product of the Creator, Jehovah God, which He communicates through His Son Christ Jesus for instruction and guidance of all persons of good will toward Almighty God, and that product is wholly based upon and squares entirely with the great fundamental principles of righteousness and equity set forth in the Bible, which is the Word of God.—Matthew 15:1-9; John 8:32; 17:17; Psalm 91:14, 4; Zechariah 8:16, 17.

Religion had its origin with Satan, who employed religion to reproach Jehovah the Almighty God. Religion was first organized with Nimrod as leader and he was the one whom

the people were taught to worship, and that was done in defiance of God.

To aid the court in here holding that the Fourteenth Amendment has been violated and thus to stand by its own established practice of upholding the constitutionally safeguarded freedom of the people, we call to the court's attention the following citations relating to opinions delivered by this and other courts of this land: *Watson* v. *Jones,* 80 U. S. 728; *Davis* v. *Beason,* 133 U. S. 333, 342; *Reynolds* v. *United States,* 98 U. S. 145; *Hamilton* v. *Regents,* 293 U. S. 245; *Lovell* v. *City of Griffin,* 303 U. S. 444; *Schneider* v. *Town of Irvington,* 308 U. S. 147; *Cantwell* v. *Connecticut,* 310 U. S. 296; *Holy Trinity Church* v. *United States,* 143 U. S. 457; *United States* v. *Schwimmer,* 279 U. S. 644, 654; *Olmstead* v. *United States,* 277 U. S. 479; *United States* v. *Macintosh,* 283 U. S. 605, 634; *Associated Press* v. *N. L. R. B.,* 301 U. S. 103, 141 (dissenting opinion of Mr. Justice Sutherland;) *Dearborn Publishing Co.* v. *Fitzgerald,* 271 Fed. 479; *Epoch P. Co.* v. *Davis,* 19 Ohio Op. 465; *People* v. *Downer,* 6 N. Y. S. (2d) 566, N. Y. City Magis. Ct.; *People* v. *Kieran et al.,* decided March 21, 1940 (by New York Nassau County Court, involving alleged violation of the statute here in question, by 13 of Jehovah's witnesses on the streets of the City of Long Beach), unreported; *Whitney* v. *California,* 274 U. S. 357, 358; *Hague* v. *C. I. O. et al.,* 307 U. S. 496.

Appellant respectfully submits that it was the duty of the police officer to protect the appellant's exercise and enjoyment of this fundamental personal right instead of arresting him. Rightly, the officer should have arrested the heckler, People's witness O'Neill, who was the real cause of the crowd; and upon omitting to arrest O'Neill the officer ought properly to have advised and urged O'Neill to move along the street because O'Neill was really the one guilty of disorderly conduct in persistently attempting to stop

appellant from continuing to exercise his fundamental personal right in disseminating information and opinion in the interest of persons willing to receive the same from him. O'Neill was not engaged in any "press activity"; he was only a pedestrian; he was not proceeding in good faith (either in his own interest or in the interest of any other person present, including the appellant) when O'Neill persistently refused to accept the proffered answer to his oft-repeated question, which answer appellant tendered in the form of the printed explanation which he (appellant) held forth for acceptance by anyone.

B.

The statute as construed and applied to appellant is void on its face inasmuch as it vests in the police authority named therein unreasonable and unlimited arbitrary and discriminatory powers, prescribes no conditions upon which said police authority may or may not order one to move on, permits arbitrary discrimination and speculation as to what constitutes a crowd, and allows a dragnet to be made of the statute, thus denying due process of law contrary to the United States Constitution, Fourteenth Amendment, Section 1.

Here we submit that Section 722 of the Penal Law is invalid on its face in that it provides that one becomes guilty of the offense of disorderly conduct for causing a crowd and for failure to move on when ordered by the police. This makes the individual policeman absolute dictator and judge, having the power to determine when a person may or may not be charged, prosecuted and found guilty of disorderly conduct.

This is discriminatory power absolutely uncontrolled by statute, and is therefore unreasonable.

For instance, a policeman might have a personal grudge against another; or he might not like a person because of "the color of his hair"; and acting on such prejudices could order such a person standing on the street to move on, and if that one failed to do so he would be guilty of violation of this statute. It has been universally held that statutes which vest in an administrative officer power to issue a permit without setting forth in the statute limitations upon the administrative official's discretion are unconstitutional and void.

For example, in the case of *Hague* v. *C. I. O. et al., supra,* a number of ordinances were outlawed because of the arbitrary power vested thereby in the permit-granting officials.

Subdivision 4 of Section 722 is void on its face because vague and indefinite in that appellant cannot tell of what he stands charged, since it is impossible to determine what "a crowd" is. Even the higher courts have impliedly recognized this. In *People* v. *Phillip,* 245 N. Y. 401, 157 N. E. 508, it was held:

> "A crowd is a throng, a great multitude, of persons, a great number. At best the word is indefinite. Differences in time and place shape its meaning. A crowd in a country school house might not be a crowd in Washington Square, but there is always implied in the word numbers with reference to the hour and location. A crowd at midnight might not be a crowd at noon."

In support of the proposition that the statute, Sub-divisions 3 and 4 of Section 722, is vague and indefinite and vests arbitrary and discriminatory power, we cite the following: *Yick Wo* v. *Hopkins,* 118 U. S. 356, 372; *Connelly* v. *General Constr. Co.,* 269 U. S. 385; *Slaughterhouse Cases,* 16 Wall. 79; *United States* v. *Cruikshank,* 92 U. S. 542, 552-553; *Hague* v. *C. I. O. et al., supra; Herndon* v. *Lowry,* 301 U. S. 242; *Detroit Creamery et al.* v. *Kinnan et al.,* 264 Fed. 845; *Smith* v. *Cahoun,* 283 U. S. 564; *Dials* v. *Common-*

wealth, 192 Ky. 440, 233 S. W. 888; *Small Co.* v. *American Sugar Refining Co.,* 267 U. S. 233; *United States* v. *Ballard,* 12 F. Supp. 321; *Lanzetta et al.* v. *State,* 59 S. Ct. 618, 619; *International Harvester Co.* v. *Commonw. of Kentucky,* 234 U. S. 217, 221.

Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause and we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that *substantial Federal questions* were presented before the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, County of New York.

Wherefore the Supreme Court of the United States ought properly to note jurisdiction of this cause for final hearing in accordance with rules of this Court.

Respectfully submitted,

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